

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

LEVEL SLEEP LLC,

Plaintiff

v.

SLEEP NUMBER CORPORATION and
SELECT COMFORT RETAIL
CORPORATION,

Defendants.

Case No.: _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Level Sleep LLC (“Plaintiff” or “Level Sleep”), by and through its undersigned attorneys, hereby alleges as follows, upon actual knowledge with respect to itself and its own acts, and upon information and belief as to all other matters.

NATURE OF THE CASE

1. This is an action for patent infringement under 35 U.S.C. § 271, et seq. by Level Sleep against defendants Sleep Number Corporation and Select Comfort Retail Corporation (collectively, “Sleep Number”) for infringement of U.S. Patent No. 6,807,698 (the “698 Patent”) and U.S. Patent No. 7,036,172 (the “172 Patent”) (collectively, the “Level Sleep Patents”).

2. Sleep Number infringes the Level Sleep Patents by, among other things, making, using, offering for sale, or selling within the United States, and/or importing into the United States, beds with sleep surfaces having multiple zones in the longitudinal direction providing low body pressure and spinal alignment. Sleep Number also infringes the Level Sleep Patents

indirectly through the direct-infringement activities of third parties including its distributors, resellers, and/or customers.

3. Level Sleep seeks damages and injunctive relief for Sleep Number's patent infringement.

PARTIES

4. Level Sleep is a limited liability company with its principal place of business in Sonoma, California. Level Sleep is in the business of designing, developing, and selling mattresses, pillows, and related products that enhance sleep, lower pain and stiffness, and reduce tossing and turning at night.

5. On information and belief, Sleep Number Corporation is a Minnesota corporation with headquarters in Minneapolis, Minnesota, and stores throughout the United States, including in this District. On information and belief, Sleep Number changed its name from Select Comfort Corporation in 2017.

6. On information and belief, Select Comfort Retail Corporation is a subsidiary of Sleep Number Corporation and is registered to do business in the State of Texas.

JURISDICTION AND VENUE

7. The Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a) because this is a complaint for patent infringement.

8. The Court also has personal jurisdiction over the defendants. On information and belief, Sleep Number conducts business and has committed acts of infringement in this district and elsewhere in the United States by making, using, offering for sale, selling, and/or importing Sleep Number beds with multi-zone mattresses providing low body pressure and spinal

alignment. Further, the exercise of personal jurisdiction over Sleep Number in this case would comport with principles of fair play and substantial justice.

9. Venue is proper in this District because, on information and belief, Sleep Number has regular and established places of business in this District including stores located in Longview (3088 North Eastman Road, Suite 104, Longview, Texas, 75605), Tyler (4601 South Broadway Avenue, Space G02A, Tyler, Texas, 75703), Sherman (613 E. North Creek Dr., Suite 300, Sherman, Texas, 75092), McKinney (1920 El Dorado Parkway, Suite 200, McKinney, Texas, 75069), Plano (2100 Dallas Parkway, Suite 124, Plano, Texas, 75093), Frisco (2601 Preston Road, Space 2090, Frisco, Texas, 75034), and Denton (2735 West University Drive, Suite 1095, Denton, Texas, 76201).

BACKGROUND

10. Level Sleep was founded with the goal of providing its customers with better sleep. One of the co-founders, Roger Sramek, is an inventor named on eight United States patents, and additional pending patent applications, covering pillows and mattresses designed specifically to improve sleep. The company sells its patented and proprietary mattresses, pillows, and other sleep-enhancing products from its original location and “Experience Center” in Sonoma, California, and through the company’s website (www.levelsleep.com).

11. Level Sleep is the owner by assignment of United States patent applications and granted patents on innovations in mattress and related sleep technology that serve to achieve these benefits, including the Level Sleep Patents. Level Sleep’s practice has been to mark its commercial products with relevant patent numbers, including the Level Sleep Patents.

12. On information and belief, Sleep Number is a public corporation (with NASDAQ ticker symbol SNBR) that manufactures and sells mattresses throughout the United States.

Among other products, Sleep Number sells a line of adjustable mattresses in its Performance Series that infringe at least two Level Sleep patents, as discussed further below. On information and belief, Sleep Number manufactures the infringing mattresses in the United States and sells them from more than 500 Sleep Number stores throughout the United States—including stores in this District—and through its website (www.sleepnumber.com).

13. Prior to co-founding Level Sleep, Mr. Sramek met with representatives of Sleep Number (then called Select Comfort). During those discussions, Mr. Sramek disclosed the Level Sleep Patents and inquired whether Sleep Number was interested in commercializing the claimed inventions. Sleep Number chose not to pursue the opportunity, and Mr. Sramek went on to co-found Level Sleep in order to commercialize his patented inventions.

FIRST CLAIM FOR RELIEF
(Infringement of U.S. Patent No. 6,807,698)

14. Level Sleep incorporates the preceding paragraphs as though fully stated here.

15. Level Sleep is the owner of all rights, title, and interest in the '698 Patent, which is entitled "Bed Having Low Body Pressure and Alignment" and issued on October 26, 2004. A true and correct copy of the '698 Patent is attached as Exhibit A.

16. The '698 Patent is directed to a mattress with multiple layers and zones to support the reclining body in alignment and with low pressure. For example, claim 1 reads as follows:

1. A mattress extending in a longitudinal direction, from a mattress head to a mattress foot, and extending in a lateral direction, normal to the longitudinal direction, for supporting a first reclining body, said body including a head part, a shoulder part, a waist part, a hip part and a leg part for reclining in the longitudinal direction with the head part toward the mattress head and the leg part toward the mattress foot, said mattress comprising,

a resilient top member having a top region possessing uniform displacement parameters for providing a uniform supporting surface pressure to the reclining body,

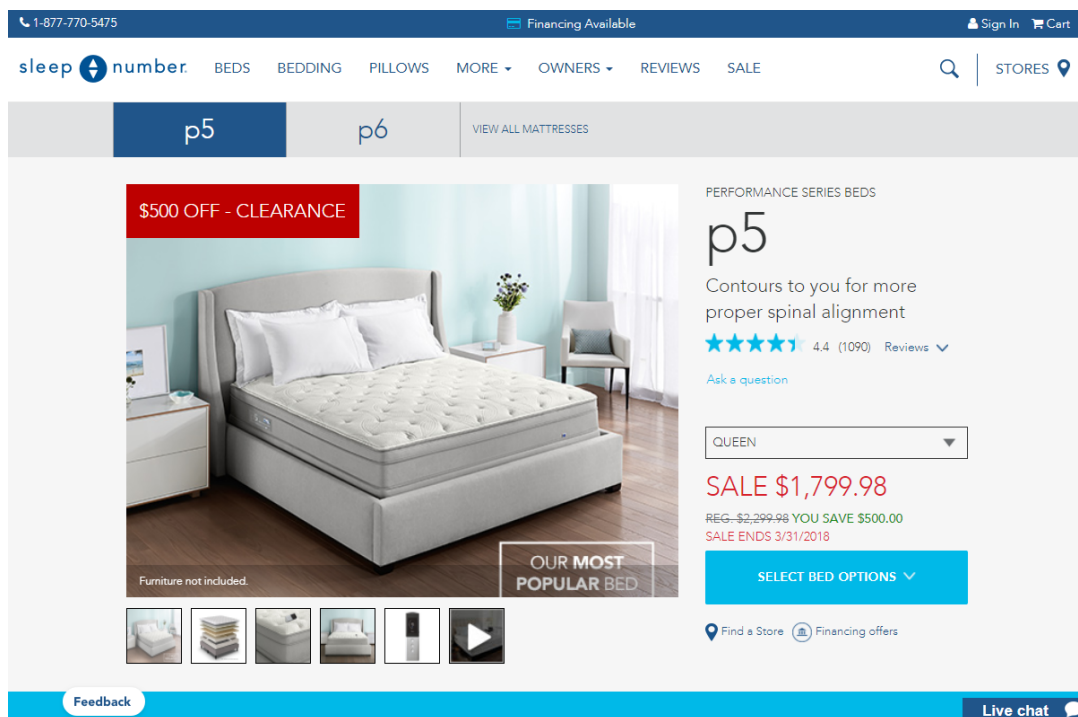
resilient supporting means below said top member, said resilient supporting means extending in said lateral direction and in said longitudinal direction with

differing displacement parameters along the longitudinal direction for imparting differing vertical compressions along the longitudinal direction in the presence of said reclining body, said resilient supporting means for coacting with said top member for establishing alignment of the shoulder, waist and hip parts and for establishing low supporting surface pressure on the body,

a cover for covering said resilient top member and said resilient supporting means without interfering with the displacement parameters and the vertical compressions when supporting said reclining body.

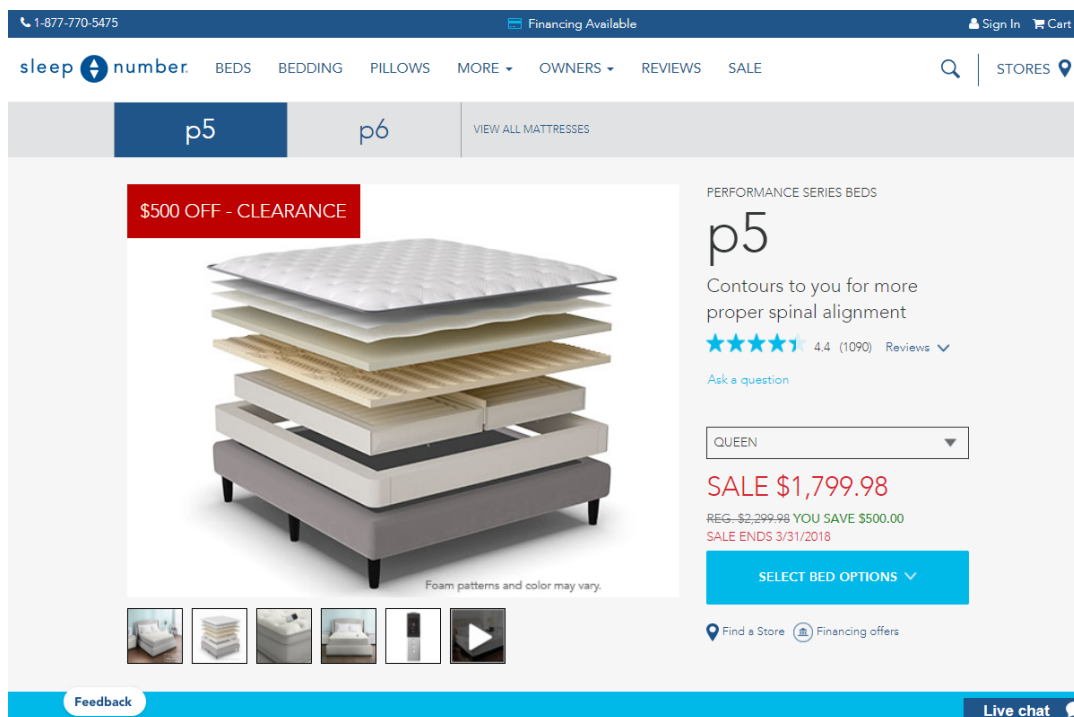
17. On information and belief, Sleep Number infringes at least claim 1 of the '698 Patent by making, using, offering for sale, and selling in the United States and/or importing into the United States infringing products.

18. Sleep Number sells a number of different beds that infringe the '698 Patent. For instance, Sleep Number markets its Performance Series p5 bed, which it states is its "most popular bed," by claiming that it "Contours to you for more proper spinal alignment."



(www.sleepnumber.com/sn/en/beds/Performance-Series-Beds/p/p5).




19. The following image from the Sleep Number website shows the various layers and zones of the Sleep Number bed.



(www.sleepnumber.com/sn/en/beds/Performance-Series-Beds/p/p5). Among other things, this picture shows a resilient top member (directly above the contoured foam layer) with a top region possessing uniform displacement parameters for providing a uniform supporting surface pressure to a reclining body, as recited in claim 1. This image also shows that the bed includes resilient supporting means below the top member, also as recited in the claim.

20. The Sleep Number beds have differing displacement parameters along the longitudinal direction for imparting differing vertical compressions so that the resilient supporting means coacts with the top member to provide alignment of the shoulder, waist, and hip parts and for establishing low supporting surface pressure on the body, as recited in claim 1. As Sleep Number itself admits, its beds provide “5 zones of contouring support” so that the reclining body enjoys “pressure-relieving support for five areas of your body: head/neck, shoulders, lower back, hips, and feet.”





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sleep  number. BEDS BEDDING PILLOWS MORE ▾ SUPPORT OWNERS ▾ REVIEWS SALE  STORES 


p5 Sleep Number® bed



INCLUDED

The perfect balance of softness and pressure relief. Zoned comfort layer provides contouring support for restful, restorative sleep.

-  DualAir™ adjustability >
- 11" Profile >
- 2" PlushFit foam comfort layer >
- 5 zones of contouring support >
 Enjoy pressure-relieving support for five areas of your body: head/neck, shoulders, lower back, hips, and feet.
-  Soft, breathable knit fabric >
-  SleepIO® technology >

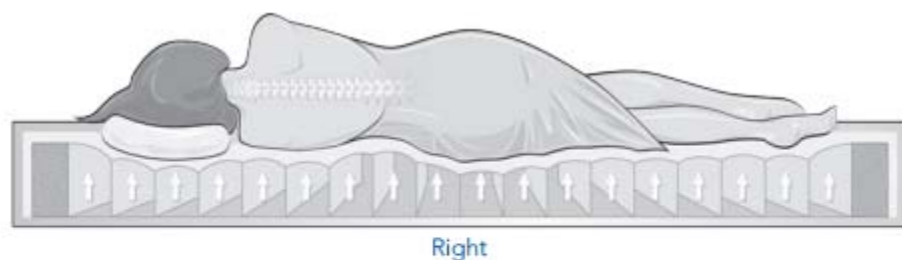
OPTIONAL

-  FlexFit™ Adjustable Bases >

 Feedback  Live chat

(www.sleepnumber.com/sn/en/beds/Performance-Series-Beds/p/p5).

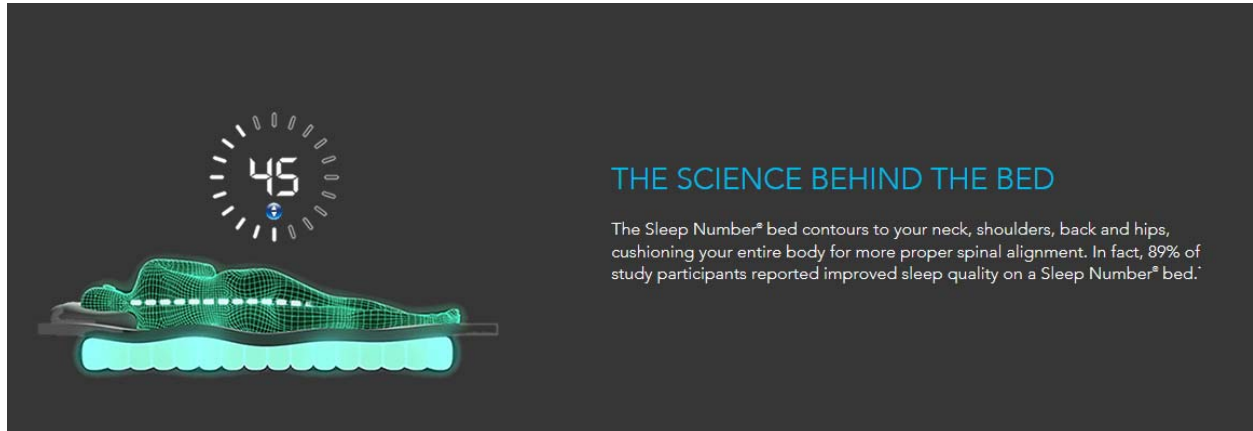
21. The following Sleep Number illustration shows how its beds provide differing displacement parameters along the longitudinal direction for imparting differing vertical compressions so that the mattress provides alignment of the shoulder, waist, and hip parts and for establishing low supporting surface pressure on the body.



- Neck and back are aligned in the same position as when you are standing
- No discomfort at shoulder and hip pressure points
- You feel the mattress support the small of your back (back sleepers) or the curve of your side (side sleepers)

(www.sleepnumber.com/mam/celum/celum_assets/8797661855774_p-series-bed-manual.pdf).

22. As Sleep Number confirms on its website, its bed “contours to your neck, shoulders, back and hips, cushioning your entire body for more proper spinal alignment.”



(www.sleepnumber.com/sn/en/how-to-sleep-better).

23. In addition, Sleep Number Performance Series beds include a mattress cover for covering the resilient top member and said resilient supporting means without interfering with the displacement parameters and the vertical compressions of the bed, as recited in claim 1.

Mattress Cover



(www.sleepnumber.com/mam/celum/celum_assets/8797661855774_p-series-bed-manual.pdf).

24. Through its actions, as described above, Sleep Number has directly infringed and continues to infringe at least claim 1 of the '698 Patent, either literally or through the doctrine of equivalents, under 35 U.S.C. § 271(a).

25. In addition, Sleep Number is indirectly responsible for the past and continuing direct infringement of at least claim 1 of the '698 Patent by certain third parties, including its customers, who have purchased and assembled Performance Series beds. When Sleep Number's infringing beds are made, used, offered for sale, or sold by its customers, such action constitutes direct infringement of at least claim 1 of the '698 Patent. Furthermore, on information and belief, Sleep Number has had knowledge of the '698 Patent since it was informed of the patent by inventor Roger Sramek and has known of the direct infringement of third parties since introducing its infringing beds. Thus, Sleep Number knows and has known (or was willfully blind to the fact) that its customers and other third parties directly infringe claims of the '698 Patent through their making, using, offering for sale, or selling within the United States the infringing Sleep Number beds.

26. On information and belief, Sleep Number has specifically intended to induce, and has induced, its customers to directly infringe at least claim 1 of the '698 Patent through its instructions to its customers and others in the use and assembly of its beds. On information and belief, Sleep Number provides instructional and other explanatory materials to its customers and others that describe the proper assembly and use of its beds, including the marketing materials and instruction manuals identified above. Further, on information and belief, Sleep Number actively encouraged and continues to actively encourage its customers and others to directly infringe the '698 Patent by making, using, testing, offering for sale, and selling the infringing

Sleep Number beds. Thus, Sleep Number has induced, and continues to induce, infringement of at least claim 1 of the '698 Patent under 35 U.S.C. § 271(b).

27. Additionally, Sleep Number has contributorily infringed and continues to contributorily infringe under 35 U.S.C. § 271(c) at least claim 1 of the '698 Patent. As explained above, certain third parties including Sleep Number's customers have been infringing and continue to directly infringe at least claim 1 of the '698 Patent. Sleep Number makes, uses, offers for sale, and sells to its customers the Performance Series beds, which are especially made or adapted by Sleep Number to be or include a component, material, or apparatus of the claims of the '698 Patent and are not staple articles or commodities of commerce capable of substantial non-infringing use. As discussed above in describing Sleep Number's direct infringement, the components of the infringing Sleep Number beds individually and together constitute a material part of the invention claimed in at least claim 1 of the '698 Patent. Furthermore, on information and belief, Sleep Number has known that one or more of the components of the Sleep Number beds were made or adapted for use in these particular infringing products. On information and belief, Sleep Number has known of the '698 Patent and its contributory infringement (or has been willfully blind to it) since it was informed of the patent by inventor Roger Sramek. Additionally, Sleep Number has had knowledge of the '698 Patent and has known or been willfully blind to the foregoing third-party direct infringement since at least the filing of this complaint and the contentions recited herein.

28. As a result of Sleep Number's infringement of the '698 Patent, Level Sleep has suffered and will continue to suffer monetary damages, including lost profits and a reasonable royalty, that are compensable under 35 U.S.C. § 284 in an amount to be determined at trial.

29. Unless an injunction is issued enjoining Sleep Number, and anyone acting on its behalf, from infringing the '698 Patent, Level Sleep will continue to be irreparably harmed. Further, the balance of hardships between Level Sleep and Sleep Number, as well as the public interest, warrants such an injunction.

30. On information and belief, despite its knowledge of the '698 Patent, Sleep Number made the decision to infringe the '698 Patent. As a result, Sleep Number's infringement of the '698 Patent may be willful, and if so Level Sleep is entitled to enhanced damages and attorney fees and costs incurred in this action, along with prejudgment interest, under 35 U.S.C. §§ 284 and 285.

SECOND CLAIM FOR RELIEF
(Infringement of U.S. Patent No. 7,036,172)

31. Level Sleep incorporates the preceding paragraphs as though fully stated here.

32. Level Sleep is the owner of all rights, title, and interest in the '172 Patent, which is entitled "Bed Having Low Body Pressure and Alignment" and issued on May 2, 2006. A true and correct copy of the '172 Patent is attached as Exhibit B.

33. The '172 Patent is directed to a mattress with multiple layers and zones to support the reclining body in alignment and with lower pressure. For example, claim 1 reads as follows:

1. A mattress, extending in a lateral direction from side to side and extending in a longitudinal direction from a mattress head to a mattress foot, for supporting a reclining body, said mattress including a head part, a shoulder part, a waist part, a hip part and a leg part, said reclining body having a displacement profile, said mattress comprising,

a core extending in said longitudinal direction and in said lateral direction, said core for undergoing differing vertical displacements when supporting the reclining body,

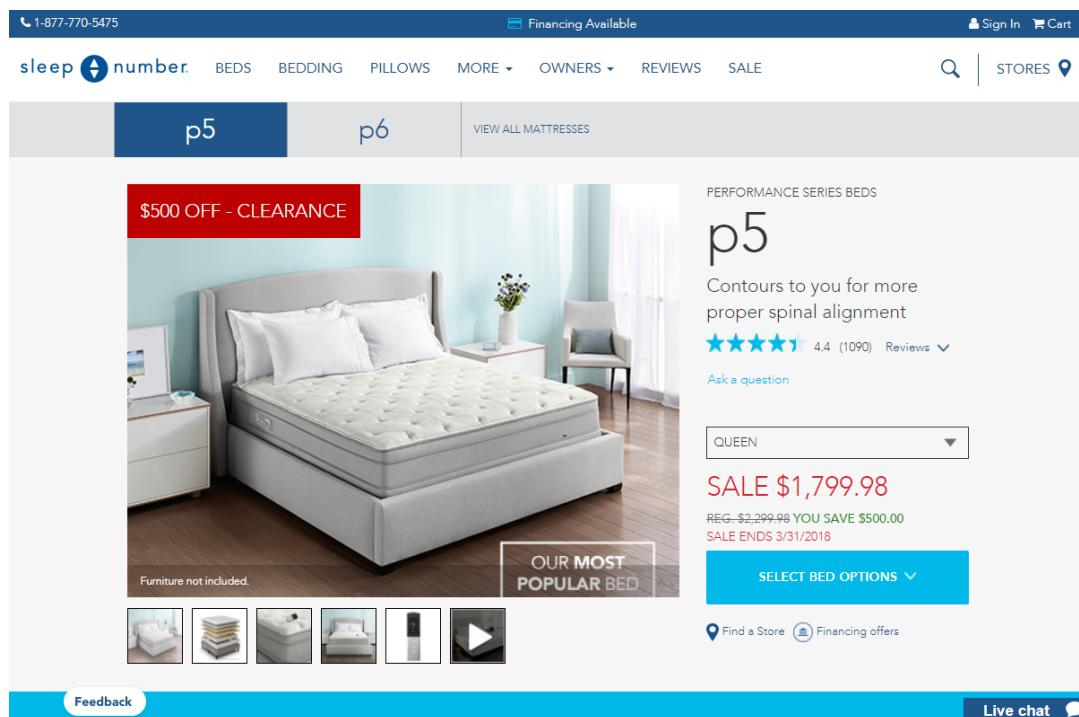
said core having displacement parameters varying to match the displacement profile of the reclining body whereby the reclining body is supported by low body pressure,

said core having a plurality of regions where the vertical displacement in one or more of the regions varies to match the displacement profile of the reclining body to maintain the reclining body in alignment,

said core including one or more foam members having structural modification where the one or more foam members at different longitudinal positions exhibit different displacement parameters including different ILDs to support the reclining body with low body pressure and exhibits different vertical displacements to maintain the reclining body in alignment.

34. On information and belief, Sleep Number infringes at least claim 1 of the '172 Patent by making, using, offering for sale, and selling in the United States and/or importing into the United States infringing products.

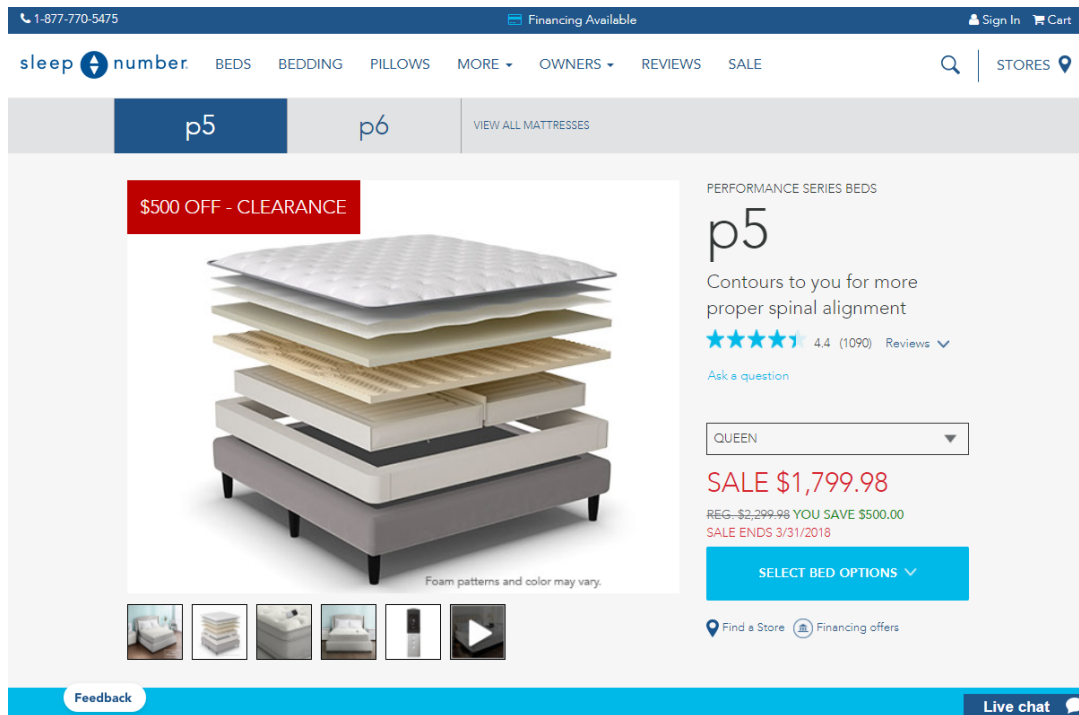
35. Sleep Number sells a number of different beds that infringe the '172 Patent. For instance, Sleep Number markets its Performance Series p5 bed, which it states is its “most popular bed,” by claiming that it “Contours to you for more proper spinal alignment.”



(www.sleepnumber.com/sn/en/beds/Performance-Series-Beds/p/p5). As illustrated and discussed further below, the Sleep Number Performance Series beds include a mattress, extending in a lateral direction from side to side and extending in a longitudinal direction from a

mattress head to a mattress foot, for supporting a reclining body, said mattress including a head part, a shoulder part, a waist part, a hip part and a leg part, said reclining body having a displacement profile, as recited in claim 1.

36. The following image from the Sleep Number website shows the various layers and zones of the Sleep Number bed.



(www.sleepnumber.com/sn/en/beds/Performance-Series-Beds/p/p5). Among other things, this picture shows a core extending in said longitudinal direction and in said lateral direction, as recited in claim 1.

37. The mattress core in the Sleep Number beds undergoes differing vertical displacements when supporting the reclining body, as recited in claim 1.

sleep number. BEDS BEDDING PILLOWS MORE ▾ SUPPORT OWNERS ▾ REVIEWS SALE Q STORES

p5 Sleep Number® bed INCLUDED

The perfect balance of softness and pressure relief. Zoned comfort layer provides contouring support for restful, restorative sleep.

DualAir™ adjustability >

11" Profile >

2" PlushFit foam comfort layer >

5 zones of contouring support >
Enjoy pressure-relieving support for five areas of your body: head/neck, shoulders, lower back, hips, and feet.

Soft, breathable knit fabric >

SleepIQ® technology >

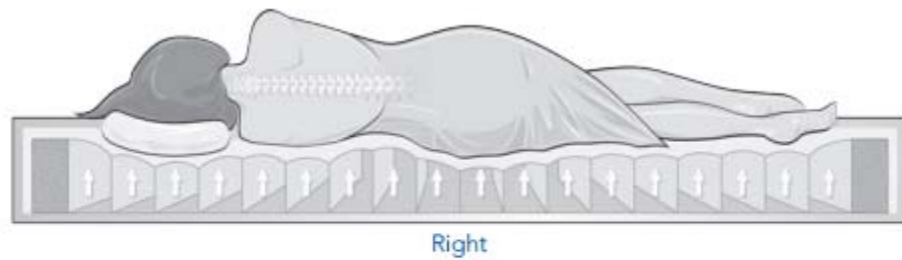
OPTIONAL

FlexFit™ Adjustable Bases >

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(www.sleepnumber.com/sn/en/beds/Performance-Series-Beds/p/p5). As Sleep Number itself admits, its beds provide “5 zones of contouring support” so that the reclining body enjoys “pressure-relieving support for five areas of your body: head/neck, shoulders, lower back, hips, and feet.” The mattress core has displacement parameters varying to match the displacement profile of the reclining body whereby the reclining body is supported by low body pressure, as recited in claim 1.

38. The following Sleep Number illustration shows how the mattress core undergoes differing vertical displacements when supporting the reclining body.

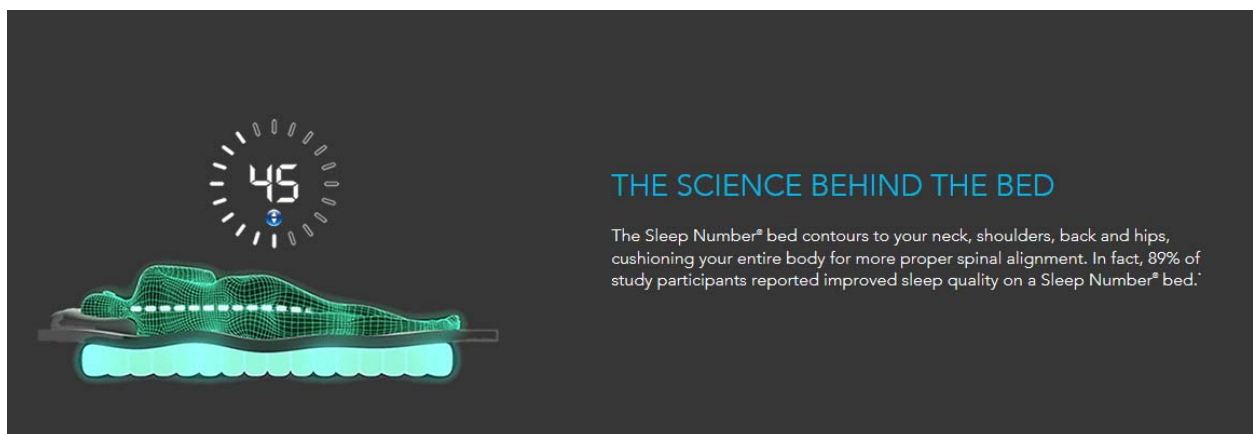


- Neck and back are aligned in the same position as when you are standing
- No discomfort at shoulder and hip pressure points
- You feel the mattress support the small of your back (back sleepers) or the curve of your side (side sleepers)

(www.sleepnumber.com/mam/celum/celum_assets/8797661855774_p-series-bed-manual.pdf).

This illustration also shows that the mattress core has a plurality of regions where the vertical displacement in one or more of the regions varies to match the displacement profile of the reclining body to maintain the reclining body in alignment, as recited in claim 1. As Sleep Number represents to its customers: “Neck and back are aligned in the same position as when you are standing.”

39. As Sleep Number confirms on its website, its bed “contours to your neck, shoulders, back and hips, cushioning your entire body for more proper spinal alignment.”



(www.sleepnumber.com/sn/en/how-to-sleep-better).

40. In addition, Sleep Number Performance Series mattress core includes a foam member having structural modification so that at different longitudinal positions the foam member exhibits different displacement parameters including, on information and belief, different ILDs (i.e., Indentation Load Deflection) to support the reclining body with low body pressure and exhibiting different vertical displacements to maintain the reclining body in alignment, as recited in claim 1. For example, the foam member is illustrated in the picture below:



(www.sleepnumber.com/sn/en/beds/Performance-Series-Beds/p/p5) (annotated).

41. Through its actions, as described above, Sleep Number has directly infringed and continues to infringe at least claim 1 of the '172 Patent, either literally or through the doctrine of equivalents, under 35 U.S.C. § 271(a).

42. In addition, Sleep Number is indirectly responsible for the past and continuing direct infringement of at least claim 1 of the '172 Patent by certain third parties, including its customers, who have purchased and assembled Performance Series beds. When Sleep Number's infringing beds are made, used, offered for sale, or sold by its customers, such action constitutes direct infringement of at least claim 1 of the '172 Patent. Furthermore, on information and

belief, Sleep Number has had knowledge of the '172 Patent since it was informed of the patent by inventor Roger Sramek and has known of the direct infringement of third parties since introducing its infringing beds. Thus, Sleep Number knows and has known (or was willfully blind to the fact) that its customers and other third parties directly infringe claims of the '172 Patent through their making, using, offering for sale, or selling within the United States the infringing Sleep Number beds.

43. On information and belief, Sleep Number has specifically intended to induce, and has induced, its customers to directly infringe at least claim 1 of the '172 Patent through its instructions to its customers and others in the use and assembly of its beds. On information and belief, Sleep Number provides instructional and other explanatory materials to its customers and others that describe the proper assembly and use of its beds, including the marketing materials and instruction manuals identified above. Further, on information and belief, Sleep Number actively encouraged and continues to actively encourage its customers and others to directly infringe the '172 Patent by making, using, testing, offering for sale, and selling the infringing Sleep Number beds. Thus, Sleep Number has induced, and continues to induce, infringement of at least claim 1 of the '172 Patent under 35 U.S.C. § 271(b).

44. Additionally, Sleep Number has contributorily infringed and continues to contributorily infringe under 35 U.S.C. § 271(c) at least claim 1 of the '172 Patent. As explained above, certain third parties including Sleep Number's customers have been infringing and continue to directly infringe at least claim 1 of the '172 Patent. Sleep Number makes, uses, offers for sale, and sells to its customers the Performance Series beds, which are especially made or adapted by Sleep Number to be or include a component, material, or apparatus of the claims of the '172 Patent and are not staple articles or commodities of commerce capable of substantial

non-infringing use. As discussed above in describing Sleep Number's direct infringement, the components of the infringing Sleep Number beds individually and together constitute a material part of the invention claimed in at least claim 1 of the '172 Patent. Furthermore, on information and belief, Sleep Number has known that one or more of the components of the Sleep Number beds were made or adapted for use in these particular infringing products. On information and belief, Sleep Number has known of the '172 Patent and its contributory infringement (or has been willfully blind to it) since it was informed of the patent by inventor Roger Sramek. Additionally, Sleep Number has had knowledge of the '172 Patent and has known or been willfully blind to the foregoing third-party direct infringement since at least the filing of this complaint and the contentions recited herein.

45. As a result of Sleep Number's infringement of the '172 Patent, Level Sleep has suffered and will continue to suffer monetary damages, including lost profits and a reasonable royalty, that are compensable under 35 U.S.C. § 284 in an amount to be determined at trial.

46. Unless an injunction is issued enjoining Sleep Number, and anyone acting on its behalf, from infringing the '172 Patent, Level Sleep will continue to be irreparably harmed. Further, the balance of hardships between Level Sleep and Sleep Number, as well as the public interest, warrants such an injunction.

47. On information and belief, despite its knowledge of the '172 Patent, Sleep Number made the decision to infringe the '172 Patent. As a result, Sleep Number's infringement of the '172 Patent may be willful, and if so Level Sleep is entitled to enhanced damages and attorney fees and costs incurred in this action, along with prejudgment interest, under 35 U.S.C. §§ 284 and 285.

PRAYER FOR RELIEF

WHEREFORE, Level Sleep respectfully requests that the Court enter judgment in its favor and against Sleep Number on this complaint as follows:

A. A judgment that Sleep Number has directly infringed, induced others to infringe, and contributed to the infringement of the Level Sleep Patents;

B. A judgment requiring Sleep Number to pay to Level Sleep damages resulting from the infringement of the Level Sleep Patents, including enhanced damages under 35 U.S.C. § 284, along with costs, expenses, pre-judgment interest, and post-judgment interest;

C. A judgment holding that this is an exceptional case and awarding Level Sleep its attorney fees and costs pursuant to 35 U.S.C. § 285;

D. A judgment imposing permanent injunctive relief prohibiting Sleep Number, and all those acting in privity or acting in concert with it, from infringing, inducing, or contributing to the infringement of the Level Sleep Patents;

E. An accounting and supplemental damages for all damages occurring after the period for which damages discovery is taken, and after discovery closes, through the Court's decision regarding the imposition of a permanent injunction;

F. An order directing Sleep Number to deliver to Level Sleep, for destruction at Level Sleep's option, all infringing products; and

G. Any other relief that the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Level Sleep hereby demands a trial by jury on all issues so triable.

Dates: March 27, 2018

Respectfully submitted,

By: /s/ Deron R. Dacus
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